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COMMITTEE ON THE PEACEFUL
USES OF OUTER SPACE

QUESTIONNAIRE ON POSSIBLE LEGAL ISSUES WITH REGARD TO AEROSPACE OBJECTS: REPLIES FROM MEMBER STATES

Note by the Secretariat

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*Replies received from Argentina, Colombia, Indonesia, Lebanon and United Kingdom of Great Britain and Northern Ireland.

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INTRODUCTION

1. At its thirty-eighth session, the Committee on the Peaceful Uses of Outer Space noted that, at the thirty-fourth session of the Legal Subcommittee, the working group of the Subcommittee on agenda item 4, on matters relating to the definition and delimitation of outer space and to the character and utilization of the geostationary orbit, had finalized the text of a questionnaire on possible legal issues with regard to aerospace objects. The Committee agreed with the Legal Subcommittee (A/AC.105/607 and Corr.1, para. 38) that the purpose of the questionnaire was to seek the preliminary views of States members of the Committee on various issues relating to aerospace objects. The Committee also agreed that the replies to the questionnaire could provide a basis for the Legal Subcommittee to decide how it might continue its consideration of agenda item 4. The Committee further agreed with the Subcommittee that States members of the Committee should be invited to give their opinions on those matters.[1]

2. The Secretary-General addressed a note verbale dated 21 August 1995 to all member States of the Committee inviting them to communicate to the Secretariat the information requested above in order for the Secretariat to prepare a report containing the information for submission to the Legal Subcommittee.

3. Information received from member States by 15 February 1996 is contained in document A/AC.105/635 and information received by 15 March 1996 is contained in document A/AC.105/635/Add.1. Information received by 18 March 1996 is contained in document A/AC.105/635/Add.2.

4. At its thirty-ninth session, the Committee agreed with the recommendations of the working group on agenda item 4, endorsed by the Legal Subcommittee at its thirty-fifth session (A/AC.105/639, para. 39), that the Secretariat should encourage those States members of the Committee that wished to submit replies to the questionnaire to do so as early as possible.[2]

5. In reply to a note verbale from the Secretary-General dated 16 July 1996, the Secretariat prepared document A/AC.105/635/Add.3 on the basis of information received from member States by 30 November 1996. Information received from member States by 31 March 1997 is contained in document A/AC.105/635/Add.4.

6. At the fortieth session, States members of the Committee that had not submitted replies were encouraged to do so as early as possible and those States that had already submitted replies were invited to supplement their replies with additional data.[3]

7. The present document was prepared by the Secretariat on the basis of information received from member States by 2 February 1998.

REPLIES RECEIVED FROM MEMBER STATES*

Question 1: Can an aerospace object be defined as an object which is capable both of travelling through outer space and of using its aerodynamic properties to remain in airspace for a certain period of time?

Colombia

[Original: Spanish]

Yes, it would be feasible to define a space object in the manner proposed with reference to its objective properties.

However, the property of being capable of remaining in airspace for a certain period of time is an admissible criterion provided that it is made sufficiently clear that such objects are subject to air law rather than space law during the period that they spend in airspace, in particular with regard to the provisions on air transit and liability for damage on the surface of Earth.

Lebanon

[Original: Arabic]

We have no objection to adopting the definition of "an aerospace object" given in this question.

Question 2: Does the regime applicable to the flight of aerospace objects differ according to whether it is located in airspace or outer space?

Colombia

[Original: Spanish]

Under current international legislation, the applicable regime does indeed differ insofar as airspace is subject to the sovereignty of States, which have established regulations covering activities in airspace, in particular with respect to air transport and liability for damage caused to third parties on the surface of Earth, whereas outer space has been declared the common property of mankind to be used freely for exploration and use by States and not open to national appropriation through any claim of sovereignty, use or occupation or in any other manner, in the same way as are the moon and other celestial bodies (Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (also referred to as the Outer Space Treaty).

In this connection, it should be borne in mind that Colombia has repeatedly expressed its disagreement with this system and asserted its claim to the segment of geostationary orbit to which it is entitled by virtue of its geographical location, this being included in article 101 of its Political Constitution as part of its territory. However, the provision of international law whereby outer space is deemed common property because of its universal interest came into force after obtaining the required number of ratifications.

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*The replies are reproduced in the form in which they were received.

Lebanon

[Original: Arabic]

Aerospace objects launched into outer space, even though they incidentally pass through airspace on their way to their destination in space (in outer space) remain associated with the launching State. Therefore, it is the space regime—and not the air regime of the State through whose airspace the aerospace object passes incidentally—which applies to aerospace objects. However, the said State should reserve its right to legitimate self-defence in case of danger or aggression.

Question 3: Are there special procedures for aerospace objects, considering the diversity of their functional characteristics, the aerodynamic properties and space technologies used, and their design features, or should a single or unified regime be developed for such objects?

Colombia

[Original: Spanish]

Yes, a unified regime for all space objects is deemed advisable. However, if by virtue of its properties a space object resembles an aircraft, the application of aeronautical provisions should be considered during the time it remains in airspace.

Lebanon

[Original: Arabic]

Considering the diversity of space objects, their characteristics and uses and the consequent difficulty of establishing a unified regime for them, we believe that a special regime should be adopted for each category of space object.

Question 4: Are aerospace objects while in airspace considered as aircraft, and while in outer space as spacecraft, with all the legal consequences that follow therefrom, or does either air law or space law prevail during the flight of an aerospace craft, depending on the destination of such a flight?

Colombia

[Original: Spanish]

In line with the previous answer, it is considered that the aerospace object should have a single legal designation subject to special provisions determining the applicable regime, especially in view of the impossibility of specifying precisely where airspace and outer space begin and end respectively, a problem which has made it difficult to reach a consensus on the criteria to be adopted in defining aerospace objects. Consequently, applying either air law or space law depending on the type of space crossed by the trajectory of the aerospace object would cause problems. Our preference is therefore for the second option of applying either one regime or the other throughout the entire flight, according to its destination.

All things considered, it would not be feasible to have an object designated as a spacecraft in outer space and an aircraft in airspace since this dual condition, apart from other drawbacks, would lead to the object being subject to registration as a space object and an aircraft simultaneously.

Our preference is actually that aerospace objects should have a single designation as space objects, but should nevertheless be subject to the relevant provisions of air law while in airspace.

Lebanon

[Original: Arabic]

In conformity with the solution proposed in the answer to question 2, we believe that emphasis should be placed on whether the activity of the aerospace object is an airspace activity or an outer space activity. Consequently, a space regime should apply if the activity is an outer space activity regardless of whether the space object is temporarily and incidentally in airspace or is in outer space.

Question 5: Are the take-off and landing phases specially distinguished in the regime for an aerospace object as involving a different degree of regulation from entry into airspace from outer space orbit and subsequent return to that orbit?

Colombia

[Original: Spanish]

We are not aware of any special regulations governing take-off and landing or the departure of space objects from airspace or their return to it.

Lebanon

[Original: Arabic]

We do not believe that the subject dealt with in this question lends itself to a divergence of views.

Question 6: Are the norms of national and international air law applicable to an aerospace object of one State while it is in the airspace of another State?

Colombia

[Original: Spanish]

The provisions of air law should apply to any object, whatever its designation, that is located in airspace whether or not such airspace is subject to State sovereignty, except where, in accordance with the previous answer, an international agreement is reached that the legislation applicable to an aerospace object should be either air law or space law, depending on the destination of the object, such agreement then being applicable between the contracting States.

Lebanon

[Original: Arabic]

Yes. The provisions of national airspace law or of international airspace law should apply to an aerospace object pertaining to a given State while it is in the airspace of another State. Yet, in line with the answer given to question 2, the latter State should reserve its right to legitimate self-defence in case of danger or aggression.

Question 7: Are there precedents with respect to the passage of aerospace objects after re-entry into the Earth's atmosphere and does international customary law exist with respect to such passage?

Colombia

[Original: Spanish]

There are no precedents in Colombia in this regard. Internationally, however, there have indeed been cases, as in Argentina, where a country owning satellite wreckage has cooperated in its recovery by offering payment and compensation for the damage caused by the object on falling to Earth.

With regard to law, the Convention on International Liability for Damage Caused by Space Objects, which regulates, *inter alia*, liability for damage caused by space objects on the surface of Earth, to aircraft in flight or to other space objects, is open for signature and ratification or for accession by non-signatory States. In addition, the Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space also seeks to regulate these matters.

Lebanon

[Original: Arabic]

There is no case law in Lebanon concerning the subject dealt with in this question.

Question 8: Are there any national and/or international legal norms with respect to the passage of space objects after re-entry into the Earth's atmosphere?

Colombia

[Original: Spanish]

To the extent that the application of the provisions of air law to space objects while in airspace is accepted, articles 1827 to 1840 of Colombia's Commercial Code, in its aeronautical section, contain provisions concerning, *inter alia*, damage to third parties on the surface of Earth.

Lebanon

[Original: Arabic]

To our knowledge, there are no national or international legal norms with respect to this subject.

Question 9: Are the rules concerning the registration of objects launched into outer space applicable to aerospace objects?

Colombia

[Original: Spanish]

Yes, the same rules concerning the registration of objects launched into outer space should be applicable to aerospace objects.

Lebanon

[Original: Arabic]

We advocate the application of the Convention on Registration of Objects Launched into Outer Space to all space objects since this will provide guarantees for the identification of space objects and their origin, and consequently for the determination of responsibility arising from them and facilitate the application of international obligations in the space field.

General Responses

Argentina

[Original: Spanish]

In this connection, we would recall that the Argentine Republic replied to this questionnaire prior to the thirty-sixth session of the Legal Subcommittee. The reply was published in document A/AC.105/635/Add.4, and we do not at the present time have any clarifications or additions to make to it.

We trust that the Legal Subcommittee will be able to give due consideration to these issues at its next session.

Indonesia

[Original: English]

As put forward at the previous session of the Committee on the Peaceful Uses of Outer Space, Indonesia's position on this important matter of definition and delimitation of outer space is well known, i.e. that States should seek the appropriate approach in formulating the definition and delimitation of outer space, taking into account the special needs of developing countries.

The Government of Indonesia takes note of the discussion on the questionnaire on possible legal issues with regard to aerospace objects undertaken at the previous sessions of the Committee which intended to seek the possibility of solving the formulation of the definition and delimitation of outer space. Nevertheless, before providing detailed views on the questionnaire, Indonesia needs some clarifications on the following matters:

(a) Will the discussion on the questionnaire aim at defining a special regime for aerospace objects?

(b) Will the discussion on the questionnaire lead to the deletion of the issue of the definition and delimitation of outer space from the agenda of the Committee?

(c) Should the answer to both questions be "yes", does the special regime solve the problems of definition and delimitation of outer space?

United Kingdom of Great Britain and Northern Ireland

[Original: English]

The Government of the United Kingdom acknowledges the importance of the subject and the future possible implications of considering legal issues in this area of aerospace objects, but regrets to inform the Secretary-General that the questionnaire is still under active discussion in both national and European contexts. The matter will be kept under close review and an agreed response to the questionnaire will be forwarded to the Committee on the Peaceful Uses of Outer Space in due course.

Notes

[1]See *Official Records of the General Assembly, Fiftieth Session, Supplement No. 20* (A/50/20), para. 117.

[2]Ibid., *Fifty-first Session, Supplement No. 20* (A/51/20), para. 128.

[3]Ibid., *Fifty-second Session, Supplement No. 20* (A/52/20), para. 115.